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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/961,424	09/25/2001	Mitsuru Yamamoto	00862.022388.	6884

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FITZPATRICK CELLA HARPER & SCINTO  
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NEW YORK, NY 10112

EXAMINER
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RUSTEMEYER, BRETT J

ART UNIT	PAPER NUMBER
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2426

MAIL DATE	DELIVERY MODE
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12/09/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/961,424		<b>Applicant(s)</b> YAMAMOTO, MITSURU	
	<b>Examiner</b> BRETT RUSTEMEYER		<b>Art Unit</b> 2426	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 6 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 08/28/2008 (Applicant's Response).

2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 38-47 is/are pending in the application.

    4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 38-47 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 25 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All    b) ☐ Some \*    c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.

4) ☐ Interview Summary (PTO-413)  
    Paper No(s)/Mail Date \_\_\_\_\_.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

### ***Art Unit Change***

2. The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 2426.

### ***Response to Amendment***

3. This Office action is in reply to Applicant's amendment and response dated August 28<sup>th</sup>, 2008, hereinafter "Applicant's Response". In response to the objection and rejections made in a previous Office action issued by the Examiner, dated May 30<sup>th</sup>, 2008, hereinafter "Examiner's Action", applicant has amended claims 38 and 43. Further the Applicant has provided arguments and remarks respectfully requesting the withdrawal of the Examiner's: 35 U.S.C. § 103(a) rejections pertaining to claims 38-47 in light of the amendments and remarks provided. Claims 38-47 are pending.

***Response to Arguments***

4. Applicant's arguments and remarks documented in Applicant's Response pertaining to the 35 U.S.C. § 103 (a) rejections have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 38 and 47 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Claims 38 and 43 recite the limitation "the confirmation data". It is not clear if the Applicant is referring to "the first confirmation data" or a separate data entity derived "by a user" from "the first confirmation data". The claims were examined under the assumption "the confirmation data" contains "the second confirmation data" and is derived by the user from "the first confirmation data".

b. Claims 39-42, and 44-47 are rejected accordingly.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in **Graham v. John Deere Co., 383 U.S. 1, 148 USPO 459 (1966)**, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows: (*See MPEP Ch. 2141*)

- a. Determining the scope and contents of the prior art;
- b. Ascertaining the differences between the prior art and the claims in issue;
- c. Resolving the level of ordinary skill in the pertinent art; and
- d. Evaluating evidence of secondary considerations for indicating obviousness or nonobviousness.

8. Claims 38-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent Number, “4,890,320”, invented by Monslow et al., hereinafter “Monslow” in view of United States Patent Number, “6,671,879 B1”, invented by Schlarb et al., hereinafter “Schlarb” further in view of United States Patent Number, “6,449,355 B1”, invented by Abraham Gutman, hereinafter “Gutman”.

#### **Regarding claims 38 and 47,**

Monslow discloses of a community antenna television (CATV) system for providing viewer-chosen program at a viewer requested time to the requesting viewer's television receiver (*Monslow*, Abstract). In this system a central unit (i.e., server or service provider) is connected to a plurality of viewer receivers (i.e., display terminals) via coaxial cables (i.e., second communication path) and viewer conventional handsets (i.e., control terminals) through the local telephone network (i.e., first communication path) – (*Monslow*, [Col. 5, L27-L44]).

Monslow further discloses that after the user has selected a program, the viewer uses their telephone handset to place a telephone call over the conventional telephone network to the

telephone number associated with the central unit (*Monslow*, [Col. 6, L4-L13]). The viewer communicates the program choice and the requested time along with the viewer's name and confidential identification number (*Monslow*, [Col. 6, L4-L13]). Additionally the viewer's address and telephone number may be used for further identification purposes (*Monslow*, [Col. 7, L29-L40]). Thus teaching the following claimed limitation:

*“a first reception unit configured to receive a video request from one of the plurality of control terminals via the first transmission path, wherein the video request comprises video designation data designating a display terminal on which the video data is to be displayed, and first identification data identifying a first control terminal that transmitted the video request;”*

*Monslow* is silent to disclose transmitting the first confirmation data to the display terminal in the manner as claimed, receiving the second confirmation data from a control terminal in the manner as claimed, comparing the first and second identification data and first and second identification data in the manner as claimed, and transmitting the requested video data based upon the result of said comparison unit in the manner as claimed.

However, in related art, *Schlarb* discloses of a method and apparatus for delivering a pay-per-view (PPV) over a hybrid fiber-coax network (*Schlarb*, [Col. 3, L35-L47]). In this system, the PPV server (*Schlarb*, FIG. 5) interfaces a plurality of program modules including a PPV Daemon program (*Schlarb*, [Col. 7, L28-L37]), a Watch PPV program (*Schlarb*, [Col. 7, L47-L61]), and a problem barker (*Schlarb*, [Col. 8, L17-L21]) to ensure the subscriber is assisted when a problem occurs. For instance, when there is a problem with the purchase the problem barker program displays problem barker to the subscriber describing the specific problem and providing a customer service telephone number to call (*Schlarb*, [Col. 8, L17-L21]). While

Schlarb may be directed to allowing a subscriber to navigate the PPV guide to purchase a PPV event, in an alternate embodiment, the Watch PPV program module allows the user to order a PPV selection by calling a telephone number (*Schlarb*, [Col. 4, L12-L27], [Col. 6, L8-L19], [Col. 8, L52-L57]).

Therefore, it would have been obvious to one of ordinarily skilled in the art, at the time of the invention, to apply the technique of displaying a problem barker to the subscriber in the event their is a problem with the purchase or delivery thereof in the manner taught by Schlarb to improve the central unit and control units, respectively, of Monslow for the predictable result of providing service to the customer in the event of a purchase and/or transmission errors.

Thus, the modified PPV system provided by the combined teaching of Monslow and Schlarb, as a whole, discloses the following limitation:

*“a confirmation data transmission unit configured to transmit via the second transmission path first confirmation data to the display terminal designated by the display terminal designation data, and to cause the display terminal to display the first confirmation data;”;*

It further would have been obvious to one of ordinary skill in the art, at the time of the invention, to apply the technique of authenticating a caller via the scheduling computer as described by Monslow to improve the customer service system of Schlarb for the predictable result of providing a means for enabling a customer service agent to identify a subscriber account and resolve the purchase and/or transmission errors.

Thus, the further modified PPV system provided by the combined teaching of Monslow and Schlarb, as a whole, discloses the following limitations:

*“a confirmation data reception unit configured to receive confirmation data from a control terminal, wherein the confirmation data includes second confirmation data that is input in the control terminal by a user who confirms the first confirmation data displayed on the display terminal, and to receive a second identification data of the control terminal that transmitted the confirmation data”.*

Monslow discloses a plurality of customer service representatives each equipped with respective terminals enter information communicated by the viewers into the scheduling and routing computer (*Monslow*, [Col. 5, L27-L35]). In this sense, a first customer service representative reads on the claimed first reception unit and a second customer service representative reads on the claimed confirmation data reception unit. Furthermore, the inherent customer service act of investigating the purchase and/or transmission errors associated with the barker reads on the claimed comparison of first and second confirmation data {(*Monslow*, [Col. 5, L27-L35]) – (*Schlarb*, [Col. 8, L17-L21])}. Thus, reading the additionally claimed:

*“a comparison unit configured to compare the first identification data received by the first reception unit with the second identification data received by said confirmation data reception unit, and to compare the first confirmation data transmitted by said confirmation data transmission unit with the second confirmation data received by said confirmation data reception unit”.*

In the event the user has been authenticated according to the described teaching of Monslow (*Monslow*, [Col. 6, L14-L30], [Col. 7, L29-L41]) and the reported problem input by the user “matches” the actual problem indicated by the automatically generated barker message from Schlarb (*Schlarb*, [Col. 8, L17-L21]), the scheduling computer *would likely* interact with



billing and address computer of Monslow such that the billing and address computer sends appropriate decoder signals at the requested time and during the transmission of the program to the requesting viewer's receiver (*Monslow*, [Col. 6, L60-L65]). Schlarb fails to define the role of the customer service representative after receiving the information from input from the user based upon the confirmation barker. However, in related art, Gutman discloses that it was extremely well known in the art, at the time of the invention, for a customer service representative to ask a series of questions regarding the nature of the problem, and follows the corresponding steps in order to diagnose and resolve the problem (*Gutman*, [Col. 1, L10-L25]).

Therefore, it would have further been obvious to one of ordinary skill in the art, at the time of the invention, to apply the customer service techniques of Gutman to improve the further modified PPV system provided by the combined teaching of Monslow and Schlarb, as a whole, for the predictable result of resolving a caller's problem with their PPV selection and thereby enabling the transmission of the selected PPV selection. Thus, reading on the following limitation:

*“a video transmission unit configured to transmit via the second transmission path the video data designated by the video designation data to the display terminal designated by the display terminal designation data, to display the video data, if the comparisons by said comparison unit result in a match”.*

**Regarding claims 39 and 44**, the claimed subject matter reads on the disclosure of Schlarb such that a specific Home Communication Terminal (HCT) receives notification from the server of a status problem in the form of a problem barker when there is a problem with the purchase

(*Schlarb*, [Col. 3, L35-L47], [Col. 7, L16-L27], [Col. 8, L17-L21]) is taught by the combined teaching of Monslow, *Schlarb*, and Gutman, as a whole.

**Regarding claims 40 and 45**, the claimed “reception identification data” reads on data contained within the problem barker of *Schlarb* such that the customer service telephone number has been assigned to the requested program choice to enable the viewer resolution in the matter {(*Monslow*, [Col. 6, L4-L13]) - (*Schlarb*, [Col. 8, L17-L21])} is taught by the combined teaching of Monslow, *Schlarb*, and Gutman, as a whole..

**Regarding claims 41 and 46**, the claimed feature reads on the disclosure in *Schlarb* that the problem barker is transmitted from the server to the viewer's television display, which requires the use of the same transmission path that transmits the requested video program to the viewer's receiver (*Schlarb*, [Col. 7, L16-L27], [Col. 8, L17-L21]) is taught by the combined teaching of Monslow, *Schlarb*, and Gutman, as a whole..

**Regarding claims 42 and 47**, the combined teaching of Monslow, *Schlarb*, and Gutman, as a whole, do not discuss the confirmation barker containing a “random number”. However, Official Notice is taken that associating a random number (i.e., reference number) with a confirmation barker was notoriously well known in the art, at the time of the invention, and would have been obvious to incorporate in modified PPV system, provided by the combined teaching of Monslow and *Schlarb*, as a whole, for the added benefit of providing a viewer with a reference number to assist a customer service representative in aiding the viewer's request.

*Contact*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brett Rustemeyer whose telephone number is (571) 270-1849. The examiner can normally be reached on Mon. - Thurs. 6:30 a.m.-5 p.m. EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on (571) 272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BR/

Examiner - Art Unit 2426

December 5<sup>th</sup>, 2008

/Annan Q Shang/

Primary Examiner, Art Unit 2424